

**FILED**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

MAR 14 2005

United States District Court		District Guam	<b>MARY L.M. MORAN</b> <b>CLERK OF COURT</b>
Name (under which you were convicted): Frankie Peter Camacho		Docket or Case No.: CR 01-00090 CV-05-00005	(2)
Place of Confinement: Taft Correctional Institution Taft, CA	Prisoner No.: 02206-093		
UNITED STATES OF AMERICA v. Frankie Peter Camacho Movant (include name under which you were convicted)			

## MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court For The Territory of Guam
- (b) Criminal docket or case number (if you know): CR 01-00090-001
- (a) Date of the judgment of conviction (if you know): October 18, 2001
- (b) Date of sentencing: February 6, 2002
- Length of sentence: 96 Months
- Nature of crime (all counts): COUNT 1 - Importation Of Crystal Methamphetamine aka "Ice", in violation of 21 U.S.C. § 952;  
COUNT 2 - Possession With Intent To Distribute Crystal Methamphetamine, in violation of 21 U.S.C. § 841(a)(1).
- (a) What was your plea? (Check one)  
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? Movan pled guilty to COUNT 1 of the Indictment pursuant to a Plea Agreement filed on October 16, 2001.
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐  
N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐ N/A
8. Did you appeal from the judgment of conviction? Yes ☐ No ☐ N/A
9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

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- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

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(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

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10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: The Movant was made to plead Guilty, And Was Convicted Of A Conduct Which Is Not A Crime Per Meaning Of 21 U.S.C. § 952 Which Defendant Was Charged With.  
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
¶ 5 of the Plea Agreement states that defendant arrived at Antonio B. WonPat International Airport in Guam via Continental Micronesian Flight 001 from Honolulu, Hawaii and approximately 151.1 Grams of substance testing presumptively to be methamphetamine was found following a search conducted by Customs Agents. These stipulations do not reflect that defendant imported the substance in question from outside United States Territory. The aircraft departed Honolulu on a non-stop flight to Guam, both locations are United States jurisdiction. A guilty plea to an offense not within the plain language of a Federal Criminal Statute is invalid, and should be reversed in order to uphold the rudimentary demands of justice. (See Attached Memorandum)  
 (b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: At the time of entry of judgement and prior to June 6, 2003, the issue raised in this ground for relief was fore closed by existing precedents in the Ninth Circuit.  
 (c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: NONE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

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(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
N/A

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
N/A



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(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

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Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Ground 1 was never presented in any other court for reason which I have explained in page 4 on 12(b)(2)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Robert E. Hartsock, Federal Public Defender  
First Hawaiian Bank, 400 Route 8, Ste. 310, Mongmong, GU 96927

(b) At arraignment and plea: Same as above

(c) At trial: N/A

(d) At sentencing: Same as 15(a)

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\* Movant is praying that this Court will review his petition, relying on **Bousley v. United States**, 118 S.Ct at 1611 (1998) where it states: "Petitioner's claim may still be reviewed in collateral proceeding if he can establish that that constitutional error in his plea colloquy "has probably resulted in the conviction of one who is actually innocent."; Movant is showing that, "in light of all the evidence," it is more than likely than not that no reasonable juror would have convicted him." **Schlup v. Delo**, 513 U.S. 298, 327-328 (1995). Movant further claims that his issue he is bringing up in this motion was not reasonably available at the time of his conviction, and contends that that his default for surpassing the one-year statute limitation should be excused because "before **Cabaccang**, 332 F.3d 622 (9th Cir. 2003), any attempt to attack his guilty plea would have been dismissed simply because his claim was unacceptable to the Court at that particular time.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: The sentenced be  
vacated and conviction be reversed.

or any other relief to which movant may be entitled.

\_\_\_\_\_  
 Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
 and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 3-04-05  
 \_\_\_\_\_ (month, date, year).

Executed (signed) on 3-04-05 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not  
 signing this motion. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

#### IN FORMA PAUPERIS DECLARATION

\_\_\_\_\_  
 [Insert appropriate court]

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# **CERTIFICATE OF SERVICE**

I, Frankie Peter Camacho hereby certify that I have served a true and correct copy of the following:

Revised copy of Form AO 243

Which is deemed filed at the time it was deposited in Taft Correctional Institution's internal mail system, since TCI has no separate system designed for legal mail, in accordance with Rule 4, Federal Rules of Appellate Procedure and *Houston V. Lack*, 108 S. Ct. 2379 (1988), by placing same in a sealed, first class postage prepaid envelope addressed to :

Mark E. Kondas  
Assistant U.S. Attorney  
Sirena Plaza  
108 Hernan Cortez Avenue  
Hagatna, GU 96910-5009

and depositing same in the institution mail box at Taft Correctional Institution at Taft, California.

I declare, under penalty of perjury (Title 28 U.S.C. 1746), That the foregoing is true and correct.

Dated this 4<sup>th</sup> day of March, 2005.

Frankie P. Camacho

Frankie P. Camacho  
#02206-093